

## HUMPBACK WHALE ENDANGERED SPECIES ACT CONSULTATION

At the September 2020 meeting, the Pacific Fishery Management Council (Council) received an update ([Agenda Item D.6, September 2020](#)) from National Marine Fisheries Service (NMFS) regarding the status of reconsultation on the Endangered Species Act (ESA) Section 7(a)(2) Biological Opinion – Effects of the *Continuing Operation of the Pacific Coast Groundfish Fishery* on humpback whales. Reconsultation was deemed necessary because 1) the five-year average for humpback whale incidental take was estimated to have been exceeded (Agenda Item F.2, Attachment 1) and 2) the global humpback whale population was redefined as having fourteen Distinct Population Segments (DPS), each having their own ESA status ([81 FR 62260](#)). The DPS found on the Pacific West Coast are Mexico, Central America, and Hawaii DPS, with the Mexico DPS listed as threatened and the Central America DPS listed as endangered. NMFS signed the new Biological Opinion (BiOp) in October 2020. The opinion also incorporates the proposed critical habitat for the Central America and the Mexico DPS ([84 FR 54354](#)).

The 2020 BiOp (Agenda Item F.2, Attachment 2) concluded the Pacific Coast Groundfish Fishery (PCGF) is not likely to jeopardize the continued existence of either the Mexico DPS or the Central America DPS of humpback whale. The BiOp's incidental take statement (ITS) specified new incidental take amounts for the Mexican and Central American DPS and detailed four nondiscretionary Terms and Conditions (T&C) designed to minimize the impact of the amount or extent of humpback whale incidental take. NMFS is seeking Council coordination on T&C 1, 2, and 4 regarding the methods and feasibility of pot gear marking regulations, the review of the Terms of Reference for the Groundfish Endangered Species Workgroup, and measures for maximizing the utility and benefits of electronic monitoring (see page 65 in Agenda Item F.2, Attachment 2)

NMFS will provide an overview of the Humpback Whale BiOp to the Council and discuss next steps at this meeting. The Council has the opportunity to cooperatively engage with NMFS to satisfy the T&Cs of this BiOp and may wish to consider giving direction to the appropriate advisory bodies necessary to achieve those T&Cs.

### **Council Action:**

**Provide Guidance on the Development of Management Measures to Satisfy the Terms and Conditions of the Humpback Whale ESA Consultation, as Appropriate.**

### **Reference Materials:**

1. Agenda Item F.2, Attachment 1: Groundfish ESA Workgroup Report: Excerpted Humpback Whale Section.
2. Agenda Item F.2, Attachment 2: Endangered Species Act Section 7(a)(2) Biological and Conference Opinion – Continuing Operation of the Pacific Coast Groundfish Fishery Humpback whale (*Megaptera novaeangliae*).
3. Agenda Item F.2.a, NMFS Presentation 1: Overview of Humpback Whale ESA Consultation and Next Steps.
4. If Received, Public Comments are Electronic Only ([see e-portal](#)).

Agenda Order:

- F.2 Humpback Whale Endangered Species Act Consultation Todd Phillips
- a. Reports and Comments of Management Entities and Advisory Bodies
  - b. Public Comment
  - c. **Council Action:** Provide Guidance on the Development of Management Measures to Satisfy the Terms and Conditions of the Humpback Whale ESA Consultation, as Appropriate

PFMC  
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